

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty BJS-1721-112
Dkt.

IAP07Rec'd PCT 19 NOV 2007

JACOTOT ET AL.

C# M#

Serial No. 10/573,576

TC/A.U. 1617

Filed: March 24, 2006

Examiner: Unassigned

Date: November 19, 2007

Title: PEPTIDES HAVING, FOR EXAMPLE, ANTIANGIOGENIC ACTIVITY AND APPLICATIONS THEREOF IN THERAPEUTICS

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a) AND MPEP § 711.03(c)(I.)(A.)

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☐ **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment 0 minus highest number
previously paid for 20 (at least 20) = 0 x \$50.00 \$0.00 (1202)/\$0.00 (2202) \$

Independent claims after amendment 0 minus highest number
previously paid for 3 (at least 3) = 0 x \$210.00 \$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for first time, (ignore improper); add
\$370.00 (1203)/\$185.00 (2203) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s)
One Month Extension \$120.00 (1251)/\$60.00 (2251)
Two Month Extensions \$460.00 (1252)/\$230.00 (2252)
Three Month Extensions \$1050.00 (1253)/\$525.00 (2253)
Four Month Extensions \$1640.00 (1254)/\$820.00 (2254)
Five Month Extensions \$2,230.00 (1255)/\$1115.00 (2255) \$

Terminal disclaimer enclosed, add \$130.00 (1814)/ \$65.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee \$180.00 (1806) \$ 0.00

Assignment Recording Fee \$40.00 (8021) \$ 0.00

Other: \$ 0.00

TOTAL FEE \$ 0.00

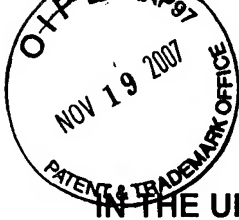
☐ **CREDIT CARD PAYMENT FORM ATTACHED.**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

901 North Glebe Road, 11th Floor
Arlington, Virginia 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
BJS:

NIXON & VANDERHYE P.C.
By Atty: B. J. Sadoff, Reg. No. 36,663

Signature: /B. J. Sadoff/



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

JACOTOT ET AL.

Confirmation No. 5093

Atty. Ref.: BJS-1721-112

National Phase of PCT/FR04/02422

Serial No. 10/573,576

TC/A.U.: 1617

Filed: March 24, 2006

Examiner: Unassigned

For: PEPTIDES HAVING, FOR EXAMPLE, ANTIANGIOGENIC ACTIVITY
AND APPLICATIONS THEREOF IN THERAPEUTICS

* * * * *

November 19, 2007

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)
AND MPEP § 711.03(c)(I.)(A.)

Grant of the present Petition and revival of the subject application due to the non-receipt of a further notice from the Patent Office are requested.

The Office is alternatively requested to treat the present Petition under 37 CFR 1.137(a) as a Petition to revive for unavoidable abandonment, in the event the procedure outlined in MPEP § 711.03(c)(I.)(A.) is not believed to be appropriate. The Office is authorized to charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 CFR 1.137(a) in the event the Office treats the present Petition under 37 CFR 1.137(a). In the event the Office deems it most appropriate to treat the present paper as a Petition under 37 CFR § 1.137(a), the applicants submit that that the entire

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PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)
AND MPEP § 711.03(c)(I.)(A.)

delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

As a further alternative, the Office is requested to treat the present Petition under 37 CFR 1.137(b) as a Petition to revive for unintentional abandonment, in the event the procedure outlined in MPEP § 711.03(c)(I.)(A.) and the requirements of 37 CFR § 1.137(a) are not believed to have been met. The Office is authorized to charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 CFR 1.137(b) in the event the Office treats the present Petition under 37 CFR 1.137(b). In the event the Office deems it most appropriate to treat the present paper as a Petition under 37 CFR § 1.137(b), the applicants submit that that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The applicants submit that the present application became abandoned due to the failure of the Patent Office to notify the applicants of the deficiency of the Sequence Listing filed July 16, 2007 noted in the Patent Office internal document bearing the time stamp of July 26, 2007(copy attached).

Specifically, the Notification of Abandonment dated September 19, 2007 states the reasons for abandonment as applicants alleged failure to respond to the Notification of Missing Requirements mailed September 25, 2006 within the time period set therein.

In fact, the applicants filed a response to the Notification of Missing Requirements dated September 25, 2006 on November 1, 2006, i.e., within the two

month time set by the Notification for responding. The due date for responding was extendible to April 25, 2007.

On June 14, 2007, the Patent Office mailed a Notification of Defective Response with a Sequence Listing Validate Report indicating that, among other things, SEQ ID NOs: 1 and 11 of the Sequence Listing filed November 1, 2006 were defective because "a Xaa can only represent a single amino acid, not a group of amino acids or a motif."

The Notification of Defective Response mailed June 14, 2007 set a one month non-extendible due date for responding. The applicants filed a response with an amended Sequence Listing on Monday, July 16, 2007.

The Patent Office internal document bearing the time stamp July 26, 2007 indicates that the Sequence Listing filed July 16, 2007 is rejected or otherwise not acceptable because the definition for "Xaa" in SEQ ID NOs: 12-23 is "amino acid" rather than "any amino acid".

The applicants did not receive a copy of the Patent Office internal document bearing the time stamp July 26, 2007 until after receipt of the Notification of Abandonment dated September 19, 2007 when the undersigned obtained the same from the PTO IFW. A search of the undersigned's file jacket associated with the above-identified application and docket records of the undersigned's firm indicates that the Patent Office internal document bearing the time stamp July 26, 2007 (copy attached) was not received until the undersigned obtained the same on September 21, 2007 from the Patent Office IFW. A copy of the Patent Office internal document bearing the time stamp July 26, 2007 was not received with the Notification of Abandonment dated

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AND MPEP § 711.03(c)(I.)(A.)

September 19, 2007 nor did the Notification of Abandonment provide any further reason or basis for the abandonment.

The undersigned's records indicate that the undersigned spoke with Ms Paulette Kidwell, who signed the Notification of Abandonment dated September 19, 2007, on September 21, 2007 and that the undersigned was advised that under the normal circumstances a further Notification would have been mailed requiring a further correction of the Sequence Listing however in the present case such a further Notification was not mailed. The undersigned's records indicate that Ms Kidwell indicated that the person generating the Patent Office internal document bearing the time stamp July 26, 2007 was responsible for sending the further Notification or any errors in the Sequence Listing.

The undersigned's records further indicate that the undersigned spoke with Ms Nancy Marie Corrigan (Tel. No. 571-272-2501) on September 21, 2007, after having telephoned and left a message for Mr. Mark Spencer whose name is identified in the attached Patent Office internal document bearing the time stamp July 26, 2007, and that Ms Corrigan indicated that the office which generated the Patent Office internal document bearing the time stamp July 26, 2007 was not responsible for advising the applicants of the errors. As with the error report forwarded with the Notification of September 25, 2006, Ms Corrigan is believed to have advised the undersigned that Ms Paulette Kidwell was responsible for forwarding the error report of July 26, 2007 (i.e., the Patent Office internal document bearing the time stamp July 26, 2007).

More importantly perhaps, the undersigned believes Ms Corrigan was not able to identify any specific passage in the Law, Rules, MPEP or WIPO Standard ST.25 (1998),

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referred to in 37 CFR § 1.821, for example, which states that the use of the phrase “amino acid” in the definition for Xaa in a Sequence Listing, instead of “any amino acid” is a valid basis for holding an application abandoned.

The abandonment of the present application due to the use of the phrase “amino acid”, instead of “any amino acid” is unreasonable and was unavoidable given the believed lack of guidance in the Law, Rules and MPEP, with regard to a prohibition on the use of a specific form or wording for the definition of Xaa in a Sequence Listing. Moreover, the Law, Rules and MPEP are not believed to prescribe abandonment of an application, without notice and an opportunity to correct such an error in form not predictable or specifically prescribed in the Rules.

At a minimum, the applicants believe a further notice of the error should have been provided with a time period set for correction of the error. Such a notice was not received, as stated above, and the applicants believe therefore that the present application should be treated according to MPEP § 711.03(c)(I.)(A.) where an Office Action was not received by the applicants.

The undersigned appreciates that there is no evidence in the Patent Office IFW that Patent Office mailed an Action which was not received by the applicants such that the facts of the present case may not meet the circumstances described in MPEP § 711.03(c)(I.)(A.).

Should the Patent Office deem the present facts to not meet the circumstances described in MPEP 711.03(c)(I.)(A.), the Office is requested to treat the present application as having been unavoidably abandoned. The Office is authorized to charge

the undersigned's Deposit Account No. 14-1140 for the fee required by 37 CFR

1.137(a) in the event the Office treats the present Petition under 37 CFR 1.137(a).

The abandonment of the present application due to the use of the phrase "amino acid", instead of "any amino acid" was unavoidable given the Law, Rules and MPEP, which are not believed to require a specific form or wording for the definition of Xaa in a Sequence Listing and, moreover, are not believed to prescribe abandonment of an application, without notice and an opportunity to correct such an error in form not predictable or specifically prescribed in the Rules. Further, the statement in the error report dated July 6, 2007 that Xaa can "only represent a single amino acid" is believed to reasonably suggest that the definition of Xaa as "amino acid" would be appropriate. As the Xaa holds or designates a single position in the sequence, the definition of Xaa as "single amino acid" would appear to have been redundant and rejected by the Patent Office.

In the event the Office deems it most appropriate to treat the present paper as a Petition under 37 CFR § 1.137(a), the applicants submit that that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

Grant of the present request to revive the above-identified application based on the present paper being treated as a Petition under Rule 137(a) is alternatively requested.

Finally, as a further alternative, the Office is requested to treat the present Petition under 37 CFR 1.137(b) as a Petition to revive for unintentional abandonment, in

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Serial No. 10/573,576

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)
AND MPEP § 711.03(c)(I.)(A.)

the event the procedure outlined in MPEP § 711.03(c)(I.)(A.) and the requirements of 37 CFR § 1.137(a) are not believed to have been met. The Office is authorized to charge the undersigned's Deposit Account No. 14-1140 for the fee required by 37 CFR 1.137(b) in the event the Office treats the present Petition under 37 CFR 1.137(b). In the event the Office deems it most appropriate to treat the present paper as a Petition under 37 CFR § 1.137(b), the applicants submit that that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The required further reply in the form of a further Amendment and revised Sequence Listing is being filed separately herewith.

An early and favorable response and revival of the present application are requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /B. J. Sadoff/
 B. J. Sadoff
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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 www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/573,576	Etienne Jacotot	BJS-1721-112

INTERNATIONAL APPLICATION NO.	
PCT/FR04/02422	
I.A. FILING DATE	PRIORITY DATE
09/24/2004	09/25/2003

23117
 NIXON & VANDERHYE, PC
 901 NORTH GLEBE ROAD, 11TH FLOOR
 ARLINGTON, VA 22203

CONFIRMATION NO. 5093

371
 ABANDONMENT/TERMINATION
 LETTER



OC000000025896219

Date Mailed: 09/19/2007

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 09/25/2006 within the time period set therein.

Petition to Revive (F)
 DATES DOCKETED

DUE Nov 19, 2007
 C/U

BAG-108

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

PAULETTE R KIDWELL

Telephone: (703) 308-9140 EXT 216

PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/909 (371 Abandonment Notice)